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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,084	05/31/2001	Craig S. Cambier	40405.830021.000	3830
7590	06/28/2004		EXAMINER	
Earl C. Hancock HOLLAND & HART LLP P.O. Box 8749 Denver, CO 80201			BRINEY III, WALTER F	
			ART UNIT	PAPER NUMBER
			2644	70

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No.	Applicant(s)
	09/872,084	CAMBIER ET AL.
	Examiner	Art Unit
	Walter F Briney III	2644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 4.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10.  Other: \_\_\_\_\_

The amendment has been entered, but does not place the application in condition for allowance.

For purposes of appeal, claims 1-3 and 5 have been cancelled and the rejection of claim 4, being the only remaining claim, is presented below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. (US Patent 6,424,646) in view of Nishikawa (US Patent 4,272,656) in view of Suntop (US Patent 3,932,712) and further in view of Williams et al. (US Patent 5,216,704).

Claim 4 is limited to a **method of constructing a telecommunications system, comprising: providing a digital subscriber line**; Gerszberg discloses a communication network (i.e. telecommunications system) with a DSL line (figure 5, element SA-DSL). **Providing a plurality of analog telephone terminals**; Gerszberg discloses a plurality of analog telephones (figure 5, elements 15A-n). **Providing at least one digital data terminal**; Gerszberg discloses digital data terminals (figure 5, elements 14A-n). Gerszberg discloses supplying power from the central office during lifeline situations (column 4, lines 56-60). Therefore, Gerszberg discloses all limitations

of the claim with the exception of **providing a power supply having a high voltage alternating current input and a low voltage direct current output**; Nishikawa teaches that modern central offices supply power with AC power (i.e. high power alternating current) that is converted into DC (i.e. low voltage direct current) (Nishikawa, column 1, lines 11-24). It would have been obvious to one of ordinary skill in the art to supply power from the central office using the AC/DC power conversion method as taught by Nishikawa for the purpose of supplying power in case of lifeline situations.

**Providing a telecommunications customer service terminal**; Gerszberg discloses an Intelligent Services Director (ISD) (i.e. customer service terminal) (column 2, line 65-column 3, line 22). **Having a low-voltage signal-input terminal for connection to said digital subscriber line**; Gerszberg discloses connecting the DSL line to the ISD (figure 5, elements SA-DSL and 22 and column 2, line 65-column 3, line 22). **Having a plurality of low-voltage analog telephone output terminals for connection to individual ones of said plurality of analog telephone terminals**; Gerszberg discloses connecting the ISD to a plurality of analog terminals (figure 5, elements 15A-n and column 9, lines 28-57). **Having at least one low-voltage digital data output terminal for connection to said at least one digital data terminal**; Gerszberg discloses connecting the ISD to at least one digital data terminal (figure 5, elements 14A-n and column 9, lines 28-57). **Having a low-voltage direct current power input terminal for connection to said a low voltage direct current output of said power supply**; Gerszberg discloses providing the ISD with power from the central office in case of lifeline situations (column 4, lines 56-60). Gerszberg discloses a modem as part

of the ISD (i.e. customer service terminal) that is always on/virtually always on, but it is noted that modems have on/off switches (see Response to Arguments). Therefore, Gerszberg in view of Nishikawa makes obvious all limitations of the claim with the exception wherein **said telecommunications customer service terminal being constructed in the absence of an on/off switch**. Omission of an element and its function is obvious if the function of the element is not desired (In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975)). With the removal of the on/off switch of Gerszberg, the modem constantly transmits in an always on/virtually always on manner **such that said telecommunications customer service terminal remains continuously active only as long as a low voltage direct current is continuously supplied to said low voltage direct current power-input terminal** (column 13, lines 47-55). **Providing a length of telephone wire connecting said signal-input terminal of said telecommunications customer service terminal to said digital subscriber line**; Gerszberg discloses connecting the ISD to the DSL line, which is carried on a twisted pair (i.e. telephone wire) (column 2, line 65-column 3, line 4), so if it is was disconnected there would be no power. **Providing a plurality of lengths of telephone wire connecting individual ones of said analog telephone output terminals of said telecommunications customer service terminal to individual ones of said plurality of analog telephone terminals**; Gerszberg discloses connecting the ISD to the analog terminals (figure 5, elements 15A-n) with TIP/RING lines (i.e. telephone wire) (column 9, lines 28-57). **Providing at least one length of telephone wire connecting said at least one low-voltage digital data output terminal of said telecommunications**

**customer service terminal to said at least one digital data terminal;** Gerszberg discloses connecting the digital terminals (14A-n) to the ISD with Ethernet lines (i.e. telephone wire) (column 9, lines 28-57). **Providing a length of telephone wire connecting said low voltage direct current power terminal of said telecommunications customer service terminal to said low voltage direct current output of said power supply;** Gerszberg discloses connecting the ISD to the central office that is supplying power with a twisted pair in case of lifeline situations (i.e. telephone wire) (column 4, lines 56-60). **Providing a manually-removable battery pack that is operable to supply a low voltage direct current to said low voltage direct current input terminal of said telecommunications customer service terminal upon failure of said high voltage alternating current input to said power supply;** Nishikawa teaches backing up the AC power of the central office with batteries (i.e. supplying direct current upon failure of alternating current) (Nishikawa, column 1, lines 11-24). Therefore, Gerszberg in view of Nishikawa and further in view of Suntop makes obvious all limitations of the claim with exception **wherein said battery pack being replaceable with a different battery pack when said battery pack becomes discharged or relatively discharged in the presence of a failure of said high voltage alternating current input to said power supply;** Williams teaches that batteries used in a power backup system under a power failure need to be replaced because they have a finite life (column 5, lines 3-18). It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the battery pack

used in a power backup system under power failure with a different battery pack for the purpose of compensating for the finite life of a battery.

### ***Response to Arguments***

Applicant's arguments with respect to claim 4, filed 28 May 2004, have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Furthermore, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner made combinations using the prior art references of Gerszberg, Nishikawa, Suntop and

Williams. In order to support these combinations, the examiner will now address each proposed combination individually.

With respect to the combination of Gerszberg and Nishikawa seen in claims 1 and 4, Gerszberg discloses receiving DC power during lifeline situations (column 4, lines 56-60). The motivation to use the central office of Nishikawa comes from the fact that lifeline power is supplied by a central office and because Gerszberg does not disclose the details of the central office it would have been necessary for one of ordinary skill in the art to determine how central offices generate DC power. Nishikawa teaches supplying DC power that is readily converted from an AC source, such as the well-known AC power grid.

With respect to the combination of Gerszberg and Nishikawa with Suntop seen in claim 2, it is clear that Gerszberg discloses a telephonic network, telephonic networks inherently use telephone wire as a part of their copper distribution. The motivation for this combination is related to the above in that there is no mention of what type of copper wire is typically used for telephonic communications. Again, one of ordinary skill wishing to institute the system taught by Suntop would deduce that copper wire measured using the AWG metric is commonly used in telephonic communications.

Finally, with respect to the combination of Gerszberg, Nishikawa, and Suntop with Williams seen in claims 3 and 5, the central office power distribution taught by Nishikawa (column 1, lines 11-24) includes an AC/DC converter with battery backup. The battery is inherently of limited supply. Williams teaches that these batteries must

be replaced for maintenance and replacement. Clearly, understanding that backup batteries require replacement is motivation to combine Williams with the prior teachings.

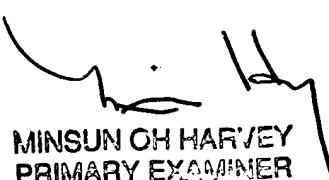
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F Briney III whose telephone number is 703-305-0347. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WFB  
6/18/04

  
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PRIMARY EXAMINER